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Letter dated 23 May 2013 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council

I am pleased to transmit herewith the assessments of the President (see annex I) and of the Prosecutor (see annex II) of the International Residual Mechanism for Criminal Tribunals, pursuant to paragraph 16 of Security Council resolution 1966 (2010).

I would be grateful if you could transmit these assessments to the members of the Security Council.

(*Signed*) Theodor **Meron**
President

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Annex I

[Original: English and French]

Progress report of the President of the International Residual Mechanism for Criminal Tribunals, Judge Theodor Meron, for the period from 15 November 2012 to 23 May 2013

Preface

1. The present report is the second to be submitted by the President of the International Residual Mechanism for Criminal Tribunals pursuant to Security Council resolution 1966 (2010), by which the Council established the Mechanism and in which the President and the Prosecutor of the Mechanism were requested to submit six-monthly reports to the Security Council on the progress of its work.

I. Introduction

2. On 22 December 2010, the Security Council adopted resolution 1966 (2010), by which it established the International Residual Mechanism for Criminal Tribunals to carry out a number of essential functions of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda after the closure of the Tribunals, including the trial of fugitives who are among the most senior leaders suspected of being most responsible for crimes. The Council emphasized that the Mechanism should be a small, temporary and efficient structure. In accordance with its statute (Security Council resolution 1966 (2010), annex 1), the Mechanism has a single set of principals — a President, a Prosecutor and a Registrar — who have responsibility over two branches, one located in Arusha, United Republic of Tanzania, and the other in The Hague. The Council determined that the Mechanism should operate for an initial period of four years and continue to operate for subsequent periods of two years following reviews of its progress, unless the Security Council decided otherwise.

3. As mandated, the Mechanism commenced operations at its Arusha branch on 1 July 2012. This branch covers functions inherited from the International Criminal Tribunal for Rwanda. The Hague branch will assume functions derived from the International Tribunal for the Former Yugoslavia on 1 July 2013. Preparations for the opening of The Hague branch are well under way.

4. The Arusha branch of the Mechanism is fully functional. It has issued orders and decisions in areas under its competence. It has been actively providing support and protection for witnesses who have testified in completed cases before the International Criminal Tribunal for Rwanda. The Arusha branch is also engaged in monitoring the cases referred by the Tribunal to national jurisdictions and has assumed responsibility over issues related to the enforcement of sentences handed down by it. The branch has sought, and will continue to seek, the cooperation of States on a variety of matters, including the critically important issue of the arrest and surrender of the remaining fugitives indicted by the Tribunal. In addition, it is

providing assistance to States in their domestic investigations and prosecutions of individuals charged in relation to the genocide in Rwanda. The Mechanism will in the near future assume responsibility over corresponding matters of the International Tribunal for the Former Yugoslavia.

II. Establishment of the Mechanism

5. With the commencement of operations at the Arusha branch on 1 July 2012 and the imminent opening of The Hague branch, the Mechanism will soon be fully operational. The timely establishment of the Mechanism is the result of close collaboration among the officials of the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia and the Mechanism. Throughout this process, the Mechanism has striven to maintain and build upon the achievements of the two Tribunals, while staying focused on its mandate and committed to remaining a small and efficient organization.

A. Organization and principals of the Mechanism

6. Article 4 of the statute of the Mechanism provides that the Mechanism shall consist of three organs: (a) the Chambers, comprising a Trial Chamber for each branch of the Mechanism and an Appeals Chamber common to both branches of the Mechanism; (b) the Prosecutor, common to both branches of the Mechanism; (c) the Registry, common to both branches of the Mechanism, which provides administrative services for the Mechanism, including the Chambers and the Prosecutor. Each organ is headed by a full-time or permanent principal, common to both branches.

7. The first President of the Mechanism is Judge Theodor Meron. President Meron was selected from a roster of 25 independent judges who were elected by the General Assembly on 20 December 2011 for a term of four years. The President serves as the head of the Mechanism and is responsible for, among other things, presiding over plenary meetings, coordinating the work of the Chambers, and supervising the activities of the Registry. President Meron is the Mechanism's only full-time Judge. Pursuant to article 8 of the statute of the Mechanism, the judges will travel to Arusha or to The Hague only as necessary at the request of the President. Insofar as possible, and as decided by the President, the judges will carry out their functions remotely. The judges are not remunerated for being on the roster but receive compensation for the days on which they are called to exercise their functions.

8. The Prosecutor of the Mechanism is Hassan Bubacar Jallow. Prosecutor Jallow was appointed in 2012 for a four-year term. Pursuant to article 14 of the statute of the Mechanism, the Prosecutor is responsible for the investigation and prosecution of persons covered by article 1 of the statute, essentially, those persons indicted by the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and individuals who have knowingly and wilfully interfered in the administration of justice or given false testimony before the Mechanism or the Tribunals.

9. The Mechanism's Registrar is John Hocking. Pursuant to article 15 of the statute, the Registrar is responsible for the administration and servicing of the branches of the Mechanism. Mr. Hocking was appointed in 2012 for a four-year term.

10. In an arrangement that promotes efficiency and coordination, and consistent with article 7 of the transitional arrangements approved by the Security Council in annex 2 to its resolution 1966 (2010), President Meron, Prosecutor Jallow and Registrar Hocking are all currently serving in two capacities. President Meron is also President of the International Tribunal for the Former Yugoslavia, Prosecutor Jallow is the serving Prosecutor of the International Criminal Tribunal for Rwanda, and Registrar Hocking is the Registrar of the International Tribunal for the Former Yugoslavia. Having each principal carry out the two sets of duties is cost-effective, since each receives only the one salary.

B. Branch locations and host country agreements

11. Pursuant to Security Council resolution 1966 (2010) and article 3 of its statute, the Mechanism has two branches, one located in Arusha, United Republic of Tanzania, and one in The Hague. The Office of Legal Affairs, assisted by the Mechanism and the Tribunals, is negotiating host country agreements with the Governments of the United Republic of Tanzania and the Netherlands. Until such agreements are concluded, the host country agreements for the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia apply provisionally to the Mechanism.

C. Commencement of the Arusha branch

12. The Arusha branch of the Mechanism has been fully operational since 1 July 2012, when it assumed certain residual functions from the International Criminal Tribunal for Rwanda. Pursuant to the statute of and the transitional arrangements for the Mechanism, those residual functions include: authority to try fugitives wanted for trial by the International Criminal Tribunal for Rwanda; authority to hear appeals against judgements or sentences handed down by the Tribunal where the notice of appeal is filed after 1 July 2012; authority to conduct reviews of judgements handed down by the Tribunal or to try post-commencement contempt cases; responsibility for the protection of victims and witnesses in completed trials of the Tribunal; supervision of the enforcement of Tribunal sentences; decisions on pardoning or commutation of sentences; and responding to requests for assistance from national jurisdictions related to the investigation or prosecution of those alleged to be responsible for serious violations of international humanitarian law in Rwanda. In addition, the Mechanism assumed responsibility for the management of the archives of both Tribunals; the latter will retain responsibility for the preparation of their records for transfer to the Mechanism.

13. The Arusha branch of the Mechanism is currently co-located with the International Criminal Tribunal for Rwanda but is actively engaged in planning for its new permanent premises.

14. On 16 January 2013, the Secretary-General submitted his second report on the construction of the new premises (A/67/696). By resolution 67/244 B, the General

Assembly approved the construction of the facility as designed and authorized the level of funding requested by the Mechanism. The Assembly also welcomed the progress made and the use of local knowledge in the design stage, and commended the Secretary-General for the savings achieved thus far. Throughout the project, the Mechanism has worked closely with and benefited greatly from the technical advice provided by the Office of Central Support Services at United Nations Headquarters.

15. The Mechanism is grateful for the cooperation offered by the Government of the United Republic of Tanzania, which has been excellent to date. The Government has offered to provide land and facilities, such as electricity, water and a drainage system, at no cost to the Organization.

D. Commencement of The Hague branch

16. Planning and preparations for the establishment of The Hague branch are on track and, like its predecessor in Arusha, The Hague branch will be fully functional from its first day of operation on 1 July 2013. Many of the core documents, policies and procedures that will govern the work of the branch are those adopted as part of the establishment of the Arusha branch. These include the Rules of Procedure and Evidence, numerous practice directions and several policies (see sect. F below).

17. For certain ongoing work, such as enforcement of sentences, protection of witnesses and provision of assistance to national jurisdictions, The Hague branch will initially rely on the support of staff of the International Tribunal for the Former Yugoslavia, working in two capacities, to ensure a smooth transition of functions from the Tribunal to the Mechanism.

18. The Hague branch will be co-located with the International Tribunal for the Former Yugoslavia for the period during which they will overlap. Plans for its eventual location are still under consideration.

E. Administration and facilities

19. For the 2012-2013 biennium, administrative services — such as human resources, finance, budget, procurement, logistics, security, and information and communications technology services — are provided to the Mechanism by the two Tribunals, under the coordination of the Registry of the Mechanism.

20. In 2012, in preparation for the decrease in the capacity of the Tribunals to support the Mechanism due to the imperatives of their progressive downsizing, the two Tribunals and the Mechanism reached a consensus on the basic requirements of a small, self-standing administration for the Mechanism, which will be divided between and service both branches. The Mechanism has developed a road map and a list of actions to be taken for the gradual implementation of this administrative component.

F. Legal and regulatory framework

21. The Mechanism has established a basic structure to govern its activities, mindful of the need to develop rules, procedures and policies that harmonize and

build upon best practices of both the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia. Since the developments described in the first progress report (S/2012/849), the Mechanism has continued its work in this area.

22. On 14 December 2012, the Registrar, following consultation with the President, issued the Practice Direction on filings made before the Mechanism for International Criminal Tribunals (MICT/7).[1] On 4 March 2013, the Registrar adopted a remuneration policy for persons representing indigent accused in appeals proceedings before the Mechanism. Further legal aid policies are under preparation.

23. On 23 April 2013, the President, following consultation with the Prosecutor and the Registrar pursuant to Rule 23 of the Mechanism's Rules of Procedure and Evidence, issued two practice directions on the conduct of proceedings, concerning: (a) the procedure for the variation of protective measures for access to confidential material of the two Tribunals and the Mechanism (MICT/8);[2] and (b) the formal requirements for requests for review of administrative decisions (MICT/9).[3] Additional practice directions are planned.

G. Recruitment of staff

24. The prompt, fair and transparent recruitment of a small staff for the Mechanism continues to be an administrative priority. Under the coordination of the Registrar, recruitment has been conducted by a panel composed of officials from the two Tribunals and members of central review bodies, taking into account appropriate geographical and gender balanced representation. Both Tribunals have shared the human resources burden in this exercise.

25. Of the 60 positions available from 1 July 2012 across both branches of the Mechanism, 86 per cent have either been filled or are now under recruitment. Staff who have been recruited or laterally transferred to the Mechanism include nationals of the following States: Albania, Australia, Belgium, Burundi, Cameroon, Canada, China, Colombia, Democratic Republic of the Congo, France, India, Italy, Kenya, Mali, Nepal, Netherlands, New Zealand, Rwanda, Senegal, Serbia, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Uganda, United Republic of Tanzania, United Kingdom of Great Britain and Northern Ireland, United States of America and Zimbabwe. Approximately 85 per cent of the staff have been recruited from the Tribunals. The Mechanism has reached the gender parity goals set by the Secretary-General with a 50 per cent gender rate in the Professional category, which exceeds the current 41 per cent average across the United Nations as a whole. The Mechanism has also appointed a gender and sexual harassment focal point.

26. In relation to its ad hoc judicial activity, the Mechanism has also undertaken a number of recruitments, including staff for the International Criminal Tribunal for Rwanda appeal from judgement currently before it.

[1] Available at www.unmict.org/files/documents/practice_directions/pd_mict7_en.pdf.
[2] Available at www.unmict.org/files/documents/practice_directions/pd_mict8_en.pdf.
[3] Available at www.unmict.org/files/documents/practice_directions/pd_mict9_en.pdf.

III. Judicial activities

27. On 2 July 2012, the President of the Mechanism assigned Judge Vagn Joensen (Denmark) as duty judge at its Arusha branch. This maximized efficiency, since Judge Joensen, who is President of the International Criminal Tribunal for Rwanda, is resident in Arusha and does not require remuneration for the duties performed for the Mechanism. In his role as duty judge, Judge Joensen has dealt or is dealing with numerous motions, including requests for variation of protective measures for witnesses in relation to the use of materials of the Tribunal in other proceedings, consideration of allegations of contempt arising out of a case of the Tribunal, and a number of confidential motions.

28. On 4 December 2012, the Appeals Chamber of the Mechanism delivered a decision in the case of *François Karera* v. *The Prosecutor*, denying a request by François Karera for the appointment of counsel to assist in preparing a request for review. In ruling on Mr. Karera's request, the Appeals Chamber observed that, like the corresponding documents of the Tribunals, the Mechanism's statute, its Rules of Procedure and Evidence and the Directive on the assignment of defence counsel do not provide for assignment of counsel at the preliminary stage of a request for review. The Appeals Chamber also noted that Mr. Karera's submissions largely repeated previous submissions that had been dismissed by the Appeals Chamber of the International Criminal Tribunal for Rwanda and concluded that his request was without merit.

29. On 11 December, the President issued the first decision in the Mechanism, on an application for early release which had been brought by Paul Bisengimana. In reaching his decision, the President explained that he was required by the Mechanism's Rules to consider the treatment of similarly-situated prisoners as a factor in deciding an application for early release and concluded that early release applicants would be considered similarly situated to all prisoners whose sentences would be supervised by the Mechanism, irrespective of whether they were convicted or sentenced by the Tribunals or the Mechanism itself. The President held that all convicts whose sentences were supervised by the Mechanism should be considered eligible for early release upon the completion of two thirds of their sentence, irrespective of the Tribunal that had convicted them. The President noted that this practice originated from the International Tribunal for the Former Yugoslavia and diverged from the practice of the International Criminal Tribunal for Rwanda, where a three quarters benchmark had been used, but concluded that fundamental fairness and justice were best served if the practice of the International Tribunal for the Former Yugoslavia applied uniformly to the entire prisoner population to be ultimately supervised by the Mechanism. After considering the factors identified in Rule 151 of the Rules of Procedure and Evidence, as well as the particular circumstances of the case, the President granted Mr. Bisengimana's application for early release.

30. On 12 December, the President granted the application of Omar Serushago for early release. The President also has pending before him a number of confidential filings related to the enforcement of sentences.

31. On 21 February 2013, the trial judgement in the Tribunal case of *The Prosecutor* v. *Augustin Ngirabatware* was issued in writing. On the same date, the same Trial Chamber of the Tribunal issued a decision on allegations of contempt, in

which, inter alia, it issued an order in lieu of indictment, charging Deogratias Sebureze and Maximilien Turinabo with contempt of the Tribunal, directed the Registry of the Tribunal to refer the matter to the Mechanism to conduct and complete the proceedings, and directed the Registry to inform the Mechanism that an amicus curiae should be appointed to prosecute Messrs. Sebureze and Turinabo. Both the trial judgement of the International Criminal Tribunal for Rwanda and the Tribunal's decision on allegations of contempt have led to litigation before the Mechanism.

32. Following the filing of a motion by Augustin Ngirabatware seeking a stay of deadline to file his notice of appeal and an order to the Registry, the President assigned a bench of the Appeals Chamber of the Mechanism to hear Mr. Ngirabatware's appeal from judgement. On 28 February, the President assigned himself as Pre-Appeal Judge in the case and, in that capacity, ruled on Mr. Ngirabatware's motion on 14 March. Pursuant to that decision, Mr. Ngirabatware filed his notice of appeal on 9 April. Briefing is ongoing.

33. On 19 March 2013, the President of the Mechanism issued his first decision on a request for review of an administrative decision by the Registrar of the Mechanism. The request for review was filed by Counsel for Mr. Ngirabatware and challenged a decision by the Registry of the Mechanism to provisionally suspend Mr. Sebureze's assignment as a member of Mr. Ngirabatware's defence team for his appeal following the decision of the International Criminal Tribunal for Rwanda on allegations of contempt. Noting the normative continuity between the Mechanism and its predecessor Tribunals and in the interests of ensuring consistency with the relevant practice and jurisprudence of the two Tribunals, the President concluded that he would decide the request for review on the basis of the relevant standards applied by the Tribunals to the review of administrative decisions taken by the Registrar. Applying these standards, the President granted the request for review, quashed the decision of the Registry and remanded the matter to the Registrar for further action, as appropriate.

34. On 27 February 2013, Messrs. Sebureze and Turinabo filed motions in the Mechanism challenging the legal force and effect of the Tribunal's decision on allegations of contempt. On 4 March, the President assigned the decision on allegations of contempt, the related order in lieu of indictment and the two pending motions to Judge Joensen as Single Judge. On 20 March, Judge Joensen determined, inter alia, that the Mechanism had the exclusive power to decide whether or not to indict in contempt cases before the International Criminal Tribunal for Rwanda where the indictment had not been confirmed before 1 July 2012, and that the Tribunal's decision on allegations of contempt had no legal effect before the Mechanism.

35. On 11 March, Messrs. Sebureze and Turinabo filed appeals from the Tribunal's decision on allegations of contempt before the Appeals Chamber of the Mechanism. The President assigned a bench of the Appeals Chamber to the appeals on 19 March; the appeals are currently pending, together with a related motion filed by the Prosecutor of the International Criminal Tribunal for Rwanda.

36. On 27 March, the Prosecutor of the International Criminal Tribunal for Rwanda filed an interlocutory appeal from the 20 March decision of the Single Judge and, on 8 April, the President assigned the appeal to a three-judge panel of the Appeals Chamber, in accordance with article 12 of the statute of the Mechanism. On

2 May, the Appeals Chamber found that the interlocutory appeal was premature and dismissed the appeal, together with a related motion.

IV. Victims and witnesses

37. Pursuant to article 20 of the statute of the Mechanism and article 5 of the transitional arrangements, the Mechanism on 1 July 2012 became responsible for witness support and protection functions in relation to the thousands of protected witnesses who have testified in completed cases tried by the International Criminal Tribunal for Rwanda. It will assume a similar role on 1 July 2013 in relation to witnesses for completed cases tried by the International Tribunal for the Former Yugoslavia.

38. The Witness Support and Protection Office has been fully operational since the establishment of the Arusha branch of the Mechanism. This has ensured a smooth transition in the provision of protection and support services to witnesses.

39. The Mechanism continues to manage and ensure the safe keeping of confidential witness information and to provide security for witnesses by undertaking threat assessments and coordinating responses to security requirements, consistent with judicial protection orders and in close collaboration with domestic authorities. The Mechanism also continues to provide ongoing support services to witnesses, including medical and psychosocial services to those residing in Rwanda, particularly for psychotrauma and HIV/AIDS patients, many of whom contracted the virus as a result of the genocide.

V. Fugitives and trial readiness

40. On 1 July 2012, in accordance with Security Council resolution 1966 (2010) and the statute of the Mechanism, the responsibility for tracking the remaining fugitives was transferred to the Mechanism. In that resolution, the Council urged all States, especially States in which fugitives were suspected to be at large, to further intensify cooperation with and render all necessary assistance to the Mechanism in order to achieve the arrest and surrender of all remaining fugitives as soon as possible.

41. The arrest and prosecution of the fugitives remains a top priority for the Mechanism. The President and Prosecutor, with the support of the Registrar, have agreed to work closely on the associated political issues.

42. To date, nine of the accused indicted by the International Criminal Tribunal for Rwanda for their participation in the 1994 Rwandan genocide remain at large. Currently, the Mechanism retains jurisdiction over three of those indictees, namely, Augustin Bizimana, Félicien Kabuga and Protais Mpiranya; the cases of the other six fugitives, namely, Fulgence Kayishema, Charles Sikubwabo, Ladislas Ntaganzwa, Aloys Ndimbati, Charles Ryandikayo and Phénéas Munyarugarama, have been referred to Rwanda.

43. In April 2013, at the request of the Prosecutor, the Mechanism duty judge vacated the warrants issued by the Tribunal for the arrest of Messrs. Bizimana, Kabuga and Mpiranya, replacing them with public warrants for their arrest and

transfer to the Arusha branch of the Mechanism. These warrants and orders are addressed to all Member States. Under article 28 of the statute of the Mechanism, Member States are obliged to comply with such requests without undue delay.

44. Consistent with its commitment to efficiency, the Mechanism is working to ensure that it is prepared to commence a trial when a fugitive is apprehended. Consequently, the Registrar is ensuring the necessary facilities and services will be in place and continues to prepare a roster of qualified potential staff, pursuant to article 15, paragraph 4, of the statute. The Prosecutor is preparing a similar roster of potential staff for his office in accordance with article 14, paragraph 5, of the statute.

VI. Cases referred to national jurisdictions

45. The Mechanism, pursuant to article 6, paragraph 5, of its statute, is responsible for monitoring cases referred to national courts under Rule 11 bis of the International Criminal Tribunal for Rwanda, with the assistance of international and regional organizations and bodies. On 1 July 2013, the Mechanism will assume a similar responsibility in relation to cases referred by the International Tribunal for the Former Yugoslavia.

46. Two cases before the Tribunal, *Bucyibaruta* and *Munyeshyaka*, were referred to France in November 2007 and remain pending before the French judiciary. The Mechanism has approached an international organization to assist in monitoring these two cases and is pursuing a partnership in this regard. Pending the conclusion of these arrangements, a trial monitor of the Tribunal was selected to prepare an initial, baseline report on each of the two cases during a mission in May 2013. These monitoring reports will be filed in the official case record.

47. The trial in the first case transferred to Rwanda by the Tribunal, *Uwinkindi*, is expected to commence later in 2013, in Kigali. The pretrial proceedings have been monitored on an interim basis by trial monitors of the Tribunal. Monitoring reports are filed in the official case record, and the public reports are available from the website of the Mechanism. Negotiations with the African Commission on Human and Peoples' Rights regarding monitoring are continuing.

48. In May 2013, the Appeals Chamber of the International Criminal Tribunal for Rwanda affirmed the referral of another case, *Munyagishari*, to Rwanda. Monitoring arrangements for this case are being planned.

49. Pursuant to the statute of the Mechanism, if it is clear that the conditions for referral are no longer being met in a particular case and if it is in the interests of justice, a referral order may be revoked and the case tried by the Mechanism.

VII. Enforcement of sentences

50. In accordance with article 25 of the statute of the Mechanism, on 1 July 2012 its President assumed jurisdiction over enforcement issues related to the Mechanism and the International Criminal Tribunal for Rwanda, including authority to designate enforcement States, to supervise the enforcement of sentences and to decide on requests for pardon or commutation of sentence for convicted persons already

serving their sentences. On 1 July 2013, the President of the Mechanism will assume similar responsibility for enforcement issues related to the International Tribunal for the Former Yugoslavia.

51. The Mechanism relies on the cooperation of States for the enforcement of its sentences. Sentences are served in Member States that have concluded enforcement of sentence agreements. Agreements concluded by the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia remain in force for the Mechanism. The Mechanism is also actively engaged in securing additional agreements for the enforcement of sentences in order to increase its enforcement capacity, and welcomes the cooperation of States in this regard.

52. Currently, persons convicted by the International Criminal Tribunal for Rwanda are serving their sentences in Mali (17 convicted persons) and Benin (13 convicted persons). One additional convicted person is being held at the United Nations Detention Facility in Arusha, awaiting transfer to an enforcement State. The Registrar's consultations with potential enforcement States in regard to this individual are ongoing, pursuant to the Practice Direction on the procedure for designation of the State in which a convicted person is to serve his or her sentence of imprisonment (MICT/2).[4]

53. Consistent with a best practice followed by the International Criminal Tribunal for Rwanda which conducted regular visits to the prisons in Mali and Benin, the Registrar undertook a second mission to these countries in November 2012. In addition, the Mechanism engaged the services of an independent expert in prison management to assess the current status of the enforcement of the sentences handed down by the Tribunal and to develop context-based recommendations. The Mechanism is reviewing the expert's recommendations and will implement them, as appropriate.

54. The Mechanism has continued to seek advice from the Department of Safety and Security and the Designated Official in Mali on the security situation in Mali and is closely monitoring the security situation of persons convicted by the Tribunal and serving their sentences in that country.

VIII. Archives and records

55. In accordance with article 27 of its statute, the Mechanism is responsible for the preservation and management of the archives of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, as well as access issues. Both Tribunals, however, are responsible for first preparing their records for transfer to the Mechanism. Pursuant to paragraph 2 of article 27, the archives of the International Criminal Tribunal for Rwanda are located in Arusha, and the archives of the International Tribunal for the Former Yugoslavia are located in The Hague.

56. The archives of the Tribunals contain materials concerning investigations, indictments and court proceedings and work in respect of the detention of accused persons, protection of witnesses and enforcement of sentences, as well as documents from States, other law enforcement authorities, international and non-governmental

[4] Available at www.unmict.org/files/documents/practice_directions/pd_mict2_en.pdf.

organizations and the general public. The materials consist of documents, maps, photographs, audiovisual recordings and objects. The Mechanism has been tasked with preserving these materials and facilitating the widest possible access to them while ensuring the continued protection of confidential information, including information concerning protected witnesses.

57. As part of its planning to assume the management of these materials pending their preparation by the Tribunals, the Mechanism established the Mechanism Archives and Records Section.

58. The Mechanism Archives and Records Section continues to offer guidance in the preparation of the records of the Tribunals. To this effect, the Section has issued a standard for the preparation and transfer of digital records, which parallels the standard on preparation of physical records that was issued previously.

59. The Section also continues to review and develop record-keeping policies and guidelines for the Mechanism on various aspects of records management, including the operation of the centres at which these records will be preserved. With respect to the preservation of the digital archives, the Section is developing a trusted digital repository designed to ensure secure storage for these records, enabling their long-term preservation and access to them by current and future generations.

60. At The Hague branch, the Mechanism Archives and Records Section has assumed responsibility for the central records centre of the International Tribunal for the Former Yugoslavia. In Arusha, physical custody of the records of the International Criminal Tribunal for Rwanda remains with that Tribunal pending completion of a small interim records centre within the premises shared by the Mechanism and the Tribunal. Once construction of the permanent premises is completed, the archives of the Tribunal and of the Arusha branch of the Mechanism will be rehoused in a dedicated storage space at that location.

IX. Cooperation of States

61. Pursuant to article 28 of the statute of the Mechanism, States are required to cooperate with the Mechanism in the investigation and prosecution of persons covered under article 1 thereof, as well as with orders and requests for assistance in relation to cases before the Mechanism. The Mechanism, like the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, is dependent on the cooperation of States.

62. The arrest and surrender of the remaining fugitives is a priority of the Mechanism. As described above, the Mechanism requires the full cooperation of States in relation to the ongoing fugitive tracking operations being conducted by the Prosecutor and reiterates the appeals made in this respect by the International Criminal Tribunal for Rwanda to the relevant States.

63. The Mechanism has been engaged with the Government of Rwanda on a number of issues. In December 2012, at the invitation of the Rwandan authorities, the President made his first official visit to that country. The President met with relevant Rwandan officials and with employees of the Mechanism based in Kigali, and also provided a briefing to the diplomatic community. In addition, the Prosecutor, the Registrar and staff of the Registry have made a number of visits to Kigali to facilitate cooperation on various issues.

X. Assistance to national jurisdictions

64. The Mechanism routinely receives requests from national authorities for assistance in relation to national investigations, prosecutions and trials of individuals charged in relation to the genocide in Rwanda. The Mechanism has continued to consider such requests for provision of assistance to national courts, including requests for evidence and/or variation or rescission of protective measures for witnesses, as well as requests to question detained persons. From 1 July 2013, the Mechanism will similarly respond to requests for assistance directed to the International Tribunal for the Former Yugoslavia.

XI. External relations

65. The principals and officials of the Mechanism have provided briefings regarding the work of the Mechanism to Member States and have engaged in discussions with interested groups on its mandate and priorities.

66. The Mechanism's website (www.unmict.org) explains its mandate and provides essential information about its functions and operations. The website is now available in four languages (English, French, Kinyarwanda and Bosnian-Serbian-Croatian) to ensure that information on the Mechanism is more accessible to individuals in Rwanda and the former Yugoslavia. The website also features links to the public records databases of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, as well as links to all Mechanism public filings. Additional material related to witness protection and the tracking of fugitives is being developed, as is a comprehensive web page aimed at providing guidance for national authorities and others who are seeking access to materials of the Mechanism, the International Criminal Tribunal for Rwanda or, in the near future, the International Tribunal for the Former Yugoslavia.

67. The Mechanism has begun to share its experience and best practices with organizations and government agencies in the Great Lakes Region. On 7 May 2013, the Registry hosted a capacity-building workshop with a delegation from the Kenya Witness Protection Agency. The workshop covered a variety of issues related to witness protection and support, including prerequisites and measures for the protection of witnesses, institutional and judicial capacity for implementation and enforcement, courtroom facilities, and challenges in providing protection and support to victims and witnesses in international and national contexts.

XII. Conclusion

68. Consistent with Security Council resolution 1966 (2010) and its mandate, the Mechanism has commenced its work in Arusha. Its second branch, located in The Hague, will be established in the near future. The Mechanism has received extensive cooperation and assistance from the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, and other offices and organizations, including the Office of Legal Affairs. Throughout, the Mechanism has remained mindful of the Security Council's injunction that it be a small and efficient organization, and it will continue to take steps to ensure the fulfilment of its mandate consistent with this injunction.

Annex II

[Original: English and French]

Progress report of the Prosecutor of the International Residual Mechanism for Criminal Tribunals, Justice Hassan Bubacar Jallow, for the period from 15 November 2012 to 23 May 2013

I. Introduction

1. The present report, which covers the period from 15 November 2012 to 23 May 2013, is the second to be submitted by the Prosecutor of the Mechanism for International Criminal Tribunals pursuant to paragraph 16 of Security Council resolution 1966 (2010) and article 32, paragraph 2, of the statute of the Mechanism.

II. Background

2. On 22 December 2010, the Security Council adopted resolution 1966 (2010), by which it established the International Residual Mechanism for Criminal Tribunals. In doing so, the Council acknowledged the contributions made by the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda to international criminal justice and accountability for serious international crimes, and reaffirmed the necessity that all persons indicted by the two Tribunals be brought to justice. Thus, the Mechanism is tasked with continuing the jurisdiction, rights and obligations and essential functions of both the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda after the completion of their respective mandates. In this regard, the Council emphasized that the Mechanism should be a small, temporary and efficient structure. The Mechanism comprises two branches. One branch, which deals with the functions inherited from the International Criminal Tribunal for Rwanda, commenced operations in Arusha, United Republic of Tanzania, on 1 July 2012. The other branch will be located in The Hague and, as at 1 July 2013, will assume responsibility for the functions and activities devolving from the International Tribunal for the Former Yugoslavia. By resolution 2038 (2012), the Security Council appointed the Prosecutor of the International Criminal Tribunal for Rwanda, Justice Hassan Bubacar Jallow, as Prosecutor of the Mechanism with effect from 1 March 2012.

III. Office of the Prosecutor, Arusha branch

3. The Arusha branch of the Office of the Prosecutor of the Mechanism is fully functional and has, since the previous reporting period, been discharging its mandate with respect to both core and ad hoc activities. These activities include the tracking of fugitives, rendering of assistance to national authorities, monitoring of cases referred to national jurisdictions, updating of fugitive files in anticipation of arrest, and prosecution of an appeal and related litigation before the Mechanism Appeals Chamber. Throughout the reporting period, the Office of the Prosecutor of

the Mechanism has benefited immensely from the support of the Office of the Prosecutor of the International Criminal Tribunal for Rwanda in ensuring a smooth transition of functions and activities. Similarly, the Prosecutor has received the cooperation of the principals of the International Tribunal for the Former Yugoslavia and of the Mechanism in planning for the commencement of operations of the Office of the Prosecutor at The Hague branch of the Mechanism on 1 July 2013, and in ensuring a seamless transition.

IV. Staffing

4. Since the submission of the previous progress report (S/2012/849, annex II), all but one of the 14 core staff of the Office of the Prosecutor at the Arusha branch have been appointed by the Registrar and have assumed office, with the remaining position under active recruitment and the incumbent expected to be in place by June 2013. The staff on board consists of three Investigators, one Crime Analyst and two Language Assistants, all six of whom are based in Kigali, and one Senior Legal Officer, one Legal Officer, one Legal Adviser, one Administrative Officer, one Documents Control Assistant and two Administrative Assistants, all stationed in Arusha. In addition, the Prosecutor has designated three other staff of the Office of the Prosecutor of the International Criminal Tribunal for Rwanda to formally carry out similar duties for the Office of the Prosecutor of the Mechanism during their respective tenures at the Tribunal. These include one Special Assistant to the Prosecutor, one Investigator and one Documents Control Assistant. In order to ensure a smooth transition of functions and activities, this staff complement has been supported, where necessary, by 52 Professional staff members of the Office of the Prosecutor of the Tribunal, designated by the Prosecutor under article 14, paragraph 3, of the statute of the Mechanism, as an interim measure.

5. Following the delivery of the trial judgement in the case of *The Prosecutor* v. *Augustin Ngirabatware* on 21 February 2013, an ad hoc appeals team consisting of one Senior Appeals Counsel, one Appeals Counsel, one Assistant Appeals Counsel and one Associate Appeals Counsel was recruited to assume primary responsibility for handling the appeal against judgement and sentence before the Mechanism Appeals Chamber. The Prosecutor is also preparing a roster of potential staff for his Office in the event of an arrest and subsequent trial, in accordance with article 14, paragraph 5, of the statute of the Mechanism.

V. Ad hoc functions

A. Fugitive tracking and trial readiness

6. Pursuant to Security Council resolution 1966 (2010), the responsibility of tracking the remaining International Criminal Tribunal for Rwanda fugitives devolved to the Mechanism on 1 July 2012, with the arrest and prosecution of the three most wanted being a key priority of the Office of the Prosecutor of the Mechanism. The Office is also required, under article 28, paragraph 3, to provide assistance, where appropriate, in tracking the other six fugitives whose files were referred to Rwanda.

7. In this regard, the Office of the Prosecutor has intensified efforts to track the three most wanted fugitives, namely, Félicien Kabuga, Protais Mpiranya and Augustin Bizimana, with a particular focus on the Great Lakes and Southern African regions. The Office of the Prosecutor continues to receive the support of the International Criminal Police Organization (INTERPOL), the United States Department of Justice through its Rewards for Justice programme, international organizations and a number of Member States in its efforts in respect of these three top-level fugitives. The Office will continue its contacts with Kenya and Zimbabwe and requests the Security Council to call upon all States in the Great Lakes Region to cooperate with the Tribunal.

B. Appeal proceedings

8. The return of the written trial judgement in the International Criminal Tribunal for Rwanda case of *The Prosecutor* v. *Augustin Ngirabatware* on 21 February 2013 generated the first appeal by the Mechanism against conviction and sentence. On the same day, the Trial Chamber of the International Criminal Tribunal for Rwanda also issued a decision on allegations of contempt in the *Ngirabatware* case and issued an order in lieu of an indictment against two individuals, which was referred to the Mechanism for the conduct and completion of proceedings. The Office of the Prosecutor of the Mechanism recruited an ad hoc appeals team to prosecute this appeal and also to litigate the substantial motion practice generated by the contempt cases. The ad hoc appeals team continues to receive the full support of the Office of the Prosecutor of the Tribunal, which was handling the matter in a dual capacity until the ad hoc team was in place.

VI. Continuing functions

A. Assistance to national jurisdictions

9. The servicing of foreign requests for assistance was formally transferred to the Mechanism as of July 2012. The staff of the Office of the Prosecutor of the International Criminal Tribunal for Rwanda continued to discharge this duty until the appointment of the core staff of the Mechanism in November 2012. Since then, the Office of the Prosecutor of the Mechanism has responded to 35 requests for assistance from 11 Member States and international organizations. The Prosecutor intends to issue in the near future a regulation governing the requests submitted to his Office and will make guidelines available on the Mechanism's website to assist foreign authorities seeking to access the confidential material held by the Tribunal and the Mechanism in accordance with the President's Practice Direction dated 23 April 2013 (MICT/8).[1]

B. Preservation and management of archives

10. On 2 July 2012, the Prosecutor of the Mechanism handed over to its Registrar an archive of 27 completed prosecution case files. The full archives of the Office of

[1] Available at www.unmict.org/files/documents/practice_directions/pd_mict8_en.pdf.

the Prosecutor of the International Criminal Tribunal for Rwanda are expected to be transferred to the Office of the Prosecutor of the Mechanism upon completion of all appeals and related litigation before the Tribunal. In the meantime, the Office of the Prosecutor has full access to the active records of the Office of the Prosecutor of the Tribunal, which will in due course be transferred to the former, while the materials of the Tribunal Office which are no longer in active use will be transferred to the archives of the Mechanism on an ongoing basis.

C. Monitoring of cases transferred to national jurisdictions

11. The monitoring function for cases transferred by the International Criminal Tribunal for Rwanda to national jurisdictions became the responsibility of the Mechanism as at 1 July 2012. The monitors appointed by the Prosecutor of the Tribunal to monitor the cases of *Munyeshyaka* and *Bucyibaruta*, transferred to France in 2007, and the case of *Uwinkindi*, transferred to Rwanda in 2012, now report to the Prosecutor of the Mechanism. In respect of the cases transferred to France, enquiries are now reported to be substantially complete and the cases are expected to be placed before the Trial Chamber by June 2013. Similarly, it is anticipated that the *Uwinkindi* case, which is in pretrial litigation in Rwanda, will be expeditiously concluded once the trial commences later in 2013.

12. On 3 May 2013, the Tribunal Appeals Chamber affirmed the referral of the case of *Munyagishari* to Rwanda for trial, subject to amendment of the indictment. This was the last and only outstanding Rule 11 bis referral application by the Prosecutor in respect of a detainee of the International Criminal Tribunal for Rwanda. In anticipation of the physical transfer of the accused from Arusha to Rwanda, the Prosecutor will appoint a monitor for that case as well. In addition, the Prosecutor will be expected to appoint monitors for the cases of the six fugitives that have been transferred to Rwanda (*Sikubwabo*, *Kayishema*, *Ntaganzwa*, *Ndimbati*, *Ryandikayo* and *Munyarugarama*) as and when the fugitives are arrested.

D. Establishment of The Hague branch of the Mechanism

13. With the establishment of The Hague branch of the Mechanism scheduled for 1 July 2013, the Prosecutor commenced the planning and preparatory work in consultation with the Prosecutor of the International Tribunal for the Former Yugoslavia and the Registrar of the Mechanism in order to ensure a smooth transition of functions and activities. This involved initiating the process of recruitment of the core staff of the Office of the Prosecutor, agreeing on the dual-capacity support expected by the Office of the Prosecutor of the Mechanism from the Office of the Prosecutor of the Tribunal in the current biennium and the workload and resource requirements for the next biennium.

14. In this regard, the five core posts for the Office of the Prosecutor at The Hague branch of the Mechanism are under active recruitment, with the expectation that the Senior Legal Officer, Legal Adviser, Administrative Assistant and two Document Managers will be in place by July 2013. In addition, it was agreed that, effective 1 July 2013, all appeals staff of the Office of the Prosecutor of the Tribunal would be designated to work in two capacities, on an interim basis, to prosecute the *Šešelj* and *Prlić* appeals before the Mechanism Appeals Chamber until resources were

available in the next biennium for the recruitment of two ad hoc appeals teams. Finally, the resource requirements for the biennium 2014-2015 were incorporated into the budget submission of the Office of the Prosecutor of the Mechanism, prepared in consultation with the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia and the Office of the Prosecutor of the International Criminal Tribunal for Rwanda.

VII. Conclusion

15. The period under review has been one of much activity and progress towards firmly establishing the Arusha branch of the Office of the Prosecutor of the Mechanism, while simultaneously planning the commencement of operations of The Hague branch of the Office on 1 July 2013. The experience gained from overcoming the challenges in setting up the Arusha branch has no doubt informed the planning and preparatory work for The Hague branch. The commitment and cooperation extended to the Office of the Prosecutor of the Mechanism by the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia has been instrumental in ensuring a relatively smooth transition of functions and activities, and the Prosecutor expresses particular gratitude for the support of the staff of the Tribunals who have and continue to work in the two capacities as and when required.